

Appl. No. 09/884,534
Atty. Docket No. 8526M
Amdt. dated April 15, 2004
Reply to Office Action of January 15, 2004
Customer No. 27752

REMARKS

Claims 1-25 and 36-43 are pending in the present application. No additional claims fee is believed to be due.

Claims 26-29 and 32-35 are canceled without prejudice.

Claims 1 and 8 have been amended. Claim 1 has been amended to further define "fabric care agent" as comprising a "fabric softener active" whereas Claim 8 was amended to remove reference to a fabric softener active.

In addition, new Claim 42 and 43 has been added. Support for this amendment is found in original claims 15 and 16, which have been allowed by the Office Action.

Claims 30 and 31 have been withdrawn as a result of a pending restriction requirement. Applicants traverse the restriction as only to these two claims.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Restriction

The Office Action restricts the application into one of two Groups.

- I. Claims 1-25 and 36-41; and
- II. Claims 26-35.

Applicants traverse the restriction only with respect to Claims 30 and 31. These claims possess the composition as defined by Claim 1 as a claim limitation. As such, the restriction is improper because no further searching is necessary since the same search as applied to Claim 1 can be applied to Claims 30 and 31. Indeed, if Claim 1 is patentable, by definition claims 30 and 31 must also be patentable since they incorporate a novel and unobvious composition as a claim limitation.

Rejection Under 35 USC 102/103 Over WO 00/24852

The Office Action rejects pending claims under 35 USC 102(a) as being anticipated by WO 00/24852 (hereinafter '852). Applicants submit that in view of the instant amendment to Claim 1, i.e., defining the fabric care agent to comprise a fabric softener active, the rejection is

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overcome. “For a prior art reference to anticipate in terms of 35 U.S.C. § 102, every element of the claimed invention must be identically shown in a single reference.’... These elements must be arranged as in the claim under review, ... but this is not an ‘ipsissimis verbis’ test.” *In re Bond*, 910 F.2d 831, 15, USPQ2d 1566, 1567 (Fed. Cir. 1990). The Office Action admits that “ ‘852 does not teach the use of a fabric softening agent.” See page 7, line 4 of Office Action. Since, Applicants amended Claim 1 to comprise a fabric softener active, the amended claim is novel.

The Office Action rejects the pending claims under 35 USC 103(a) as obvious over ‘852. Applicants submit that the instant amendment overcomes the rejection. Moreover, Applicants submit that Office Actions fails to establish that the ‘852 teaches or suggests a “**rinse-added fabric care composition**” much less providing the motivation with a reasonable expectation of success. Applicants point out that according to ‘852:

“Surprisingly, it has been found that by formulating a cleansing agent or detergent to produce a composition that separates into at least two aqueous phases when not in use leads to an **unexpected improvement in the cleansing effect** of such compositions, and in particular the dual effect against both organic and inorganic dirt.” (Emphasis added)

citing Column 2, lines 54-59 of U.S. Pat. No. 6,720,300 (equivalent to ‘852).

Applicants submit that one skilled would NOT be motivated to modify the composition of ‘852 to a “**rinse-added composition**.” At best, fabrics are “cleansed” of “organic and inorganic dirt” in the wash cycle opposed to the rinse cycle.

Rejection Under 35 USC 103(a) Over ‘852 in view EP 462,806.

The Office Action rejects the claims under 35 USC 103(a) as being unpatentable over ‘852 in view of EP 462,806 (hereinafter ‘806). Applicants submit that the instant amendment overcomes the rejection. According to the Office Action:

“It would have been obvious to one of ordinary skill in the art, at the time of the invention was made, to use a **fabric softening agent** in the cleaning composition taught by ‘852, with a reasonable expectation of success, because ‘806 teaches the use of a fabric softening compound in a similar laundry detergent composition and, further, fabric softening agents are desirable ingredients for laundry detergent composition.” (Emphasis added).

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Applicants respectfully submit that '852 fails to teach a fabric softening agent. Rather, Applicants assert that '852 relates to a liquid *cleansing or detergent* composition. Perhaps the Office intended to refer to the broader term of "fabric care agent." In any event, Applicants respectfully submit the Office Action fails to establish how the composition of '806 and '852 are "similar" enough to provide the expectation of success to arrive at Applicants amended claims. No apparent mention is made in '806 to visually distinct phases.

Rejection Under 35 USC 102/103 Over EP 723,005

The Office Action rejects pending claims under 35 USC 102(b) as being anticipated by EP 723,005 (hereinafter '005) or alternatively as obvious under 103 (a). Applicants submit that in view of the instant amendment to Claim 1, i.e., defining the fabric care agent to comprise a **fabric softener active**, the rejection is overcome. Moreover, Applicants respectfully submit that there is no motivation or reasonable expectation of success in modifying '005, which, according to the Abstract, is "a dusting and cleaning composition particularly suited for cleaning furniture and similar surfaces." Applicants respectfully submit that one skilled in the art would be hard pressed to modify a "dusting composition" to a "rinse-added fabric care composition" much less with a reasonable expectation of success.

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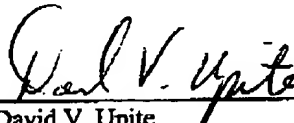
Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 USC 102 and 103. Early and favorable action in the case is respectfully requested.

Applicants have made an earnest effort to place their application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, Applicants respectfully request reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-25, 30, 31 and 36-43.

Respectfully submitted,

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